IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8956 of 2007
To
SPECIAL CIVIL APPLICATION No. 8963 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI SANJAY MOHANBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ANSHIN H DESAI for Petitioner(s) : 1,
MRS VS PATHAK ASST. GOVERNMENT PLEADER for Respondent(s) : 1-2,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR NV ANJARIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 01/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These petitions challenge the decision of respondent No.2-Election Officer rejecting the petitioners' nomination forms for elections of members of Morpa Gram Panchayat in Patan district. All the petitioners had submitted their nomination forms on 23.3.2007; the last date for submitting the forms was 24.3.2007; the date of scrutiny of such forms was 26.3.2007 and the date of withdrawal of nomination forms was 28.3.2007.

At the scrutiny made on 26.3.2007, the Election Officer declared the nomination forms of the petitioners as invalid on the ground that the signatures required to be made in Parts 8 and 9 of the nomination forms and in the verification column were not to be found.

2. The present petitions were filed on 29.3.2007 with a grievance that when the petitioners went to the office of the Election Officer on 23.3.2007, the petitioners were specifically informed by the Election Officer that the signatures in parts 8 and 9 of the nomination forms and the signatures in the verification column were not to be put by the petitioners except in presence of the Election Officer on 26.3.2007. The petitioners accordingly submitted the nomination forms without such signatures in parts 8 and 9 and in the verification column in the nomination forms. However, on 26.3.2007, the Election Officer declared the nomination forms of the petitioners as invalid on the above ground

without permitting the petitioners to put their requisite signatures on the nomination forms. The petitioners also submitted their letters dated 26.3.2007 requesting for permitting the petitioners to put their signatures in the nomination forms, but the Election Officer without giving any such opportunity proceeded to declare the petitioners' nomination forms as invalid on 26.3.2007. Thereafter on 28.3.2007, six dummy candidates withdrew their nomination forms leaving in fray only six candidates for seven seats of the members of Morpa Gram Panchayat. Aggrieved by the said action and decision on the part of the Election Officer, these petitions were filed on 29.3.2007.

3. By our order dated 3.4.2007, notices were made returnable for final disposal.

Affidavit-in-reply has been filed on behalf of the State Election Commission and also by the Election Officer contesting the petitions. The Election Officer has denied the allegations that the Election Officer had conveyed to the petitioners that the signatures in parts 8 and 9 of the nomination forms and in the verification column were to be made on 26.3.2007 in front of the Election Officer. Along with the affidavit-in-reply filed on behalf of the Election Commission, the declaration of the result of the election in form 12-(A) under Rule 22(2) of the Gujarat Panchayat Election Rules, 1994 is produced (which according to the Election

Commission was received from the Election Officer). It is submitted on behalf of the respondents that the petitioners ought to have filed election petitions under the Gujarat Panchayats Act for challenging such declaration of results.

4. Mr Anshin Desai for the petitioners states that till the date of filing the petitions and till the petitioners submitted the applications under the Right to Information Act for getting the details of the date of publication of such declaration of results, the results were not published as required by the relevant Rules and that for the first time, the declaration of the results was brought to the notice of the petitioners through the affidavit in reply served on the petitioners on 17.4.2007.

5. Having heard the learned counsel for the parties, we are of the view that since the petitions involve disputed questions which are mixed questions of fact and law and the results of the elections are already declared by now, it would be appropriate to relegate the petitioners to the alternative remedy of filing election petitions under Section 31 of the Gujarat Panchayats Act, 1993.

6. Mr Desai for the petitioners, however, apprehends that if such election petitions were to be filed now, the respondents may raise the objection regarding limitation.

7. In the peculiar facts and circumstances of the case, more particularly in view of the fact that the result of rejection of the petitioners' nomination forms has resulted into six candidates being declared uncontested and considering the fact that one ward has gone unrepresented for want of any valid nomination, and also considering the fact that all the seven petitioners had already moved this Court on 29.3.2007 and having regard to the decision of the Apex Court in Danda Rajeshwari vs. Bodavula Hanumayamma, 1996 (6) SCC 199, we are of the view that the discretionary jurisdiction of this Court is required to be exercised for directing that in case the petitioners file election petitions before the Election Tribunal under the Gujarat Panchayats Act, 1993 within three weeks from today, the Election Tribunal shall entertain the same on merits and hear and decide the same in accordance with law without raising any objection about limitation, and as expeditiously as possible and preferably within four months from the date of filing the Election Petitions.

It is directed accordingly.

8. The petitions are disposed of in terms of the above directions. Rule is made absolute to the aforesaid extent.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/-